

[DISCUSSION DRAFT]

MAY 10, 2011

112TH CONGRESS
1ST SESSION**H. R.** _____

To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

_____ introduced the following bill; which was referred to
the Committee on _____

A BILL

To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enhancing CPSC Au-
5 thority and Discretion Act of 2011”.

1 **SEC. 2. DEFINITION OF CHILDREN'S PRODUCT.**

2 (a) DEFINITION.—Section 3(a)(2) of the Consumer
3 Product Safety Act (15 U.S.C. 2052(a)(2)) is amended
4 in the matter preceding subparagraph (A)—

5 (1) by striking “intended primarily for chil-
6 dren” and inserting “primarily intended for use by
7 children”; and

8 (2) by striking “intended for a child” and in-
9 serting “intended for use by a child”.

10 (b) TECHNICAL AMENDMENT.—Section 101(a)(1) of
11 the Consumer Product Safety Improvement Act of 2008
12 (15 U.S.C. 1278a(a)(1)) is amended by striking “(as de-
13 fined in section 3(a)(16) of the Consumer Product Safety
14 Act (15 U.S.C. 2052(a)(16)))” and inserting “(as defined
15 in section 3(a) of the Consumer Product Safety Act (15
16 U.S.C. 2052(a)))”.

17 **SEC. 3. CHILDREN'S PRODUCTS CONTAINING LEAD.**

18 (a) IN GENERAL.—Section 101(a)(2) of the Con-
19 sumer Product Safety Improvement Act of 2008 (15
20 U.S.C. 1278a(a)(2)) is amended—

21 (1) in subparagraph (A), by striking “600 parts
22 per million” both places it appears and inserting
23 “0.06 percent”;

24 (2) by striking subparagraphs (B) and (C) and
25 inserting the following:

1 “(B) 0.03 PERCENT BY WEIGHT.—Except
2 as provided in subparagraphs (C), (D), (F) and
3 (G), beginning February 10, 2009, the lead
4 limit referred to in paragraph (1) is 0.03 per-
5 cent total lead content by weight for any part
6 of a children’s product.

7 “(C) 0.01 PERCENT BY WEIGHT.—Except
8 as provided in subparagraphs (D) and (G), be-
9 ginning on the date that is 4 years after the
10 date of enactment of this Act, the lead limit re-
11 ferred to in paragraph (1) is 0.01 percent total
12 lead content by weight for any part of a chil-
13 dren’s product that—

14 “(i) is designed or intended primarily
15 for use by a child 6 years of age or young-
16 er; and

17 “(ii) can be placed in a child’s
18 mouth.”;

19 (3) in subparagraph (D)—

20 (A) by striking “100 parts per million”
21 and inserting “0.01 percent”;

22 (B) by inserting “described in such sub-
23 paragraph” after “product category”;

1 (C) by striking “300 parts per million”
2 both places it appears and inserting “0.03 per-
3 cent”; and

4 (D) by striking “3 years” and inserting “4
5 years”;

6 (4) by redesignating subparagraph (E) as sub-
7 paragraph (G) and inserting after subparagraph (D)
8 the following:

9 “(E) DETERMINATION GUIDELINES.—For
10 purposes of subparagraphs (C)(ii) and (D) and
11 subsection (b)(1)(A)(ii), a children’s product
12 can be placed in a child’s mouth if any part of
13 the children’s product can actually be brought
14 to the mouth and kept in the mouth by a child
15 so that it can be sucked and chewed. If the chil-
16 dren’s product can only be licked, it is not re-
17 garded as able to be placed in the mouth. If a
18 toy or part of a toy in one dimension is smaller
19 than 5 centimeters, it can be placed in the
20 mouth.

21 “(F) APPLICATION OF MORE STRINGENT
22 LIMIT TO OTHER CHILDREN’S PRODUCTS.—The
23 Commission may, by regulation, apply the limit
24 set forth in subparagraph (C) or (D) to any
25 children’s product or class of products if it de-

1 termines after a hearing that the lead content
2 in such product or class of products, as limited
3 by subparagraph (B), presents an unreasonable
4 risk to children’s health.”; and

5 (5) in subparagraph (G) (as so redesignated),
6 by striking “or (D)” and inserting “(D), or (F)”.

7 (b) PROSPECTIVE APPLICATION OF LEAD LIMIT FOR
8 CHILDREN’S PRODUCTS.—Section 101(a) of the Con-
9 sumer Product Safety Improvement Act of 2008 (15
10 U.S.C. 1278a(a)) is further amended by adding at the end
11 the following:

12 “(3) APPLICATION.—Each limit set forth in
13 paragraph (2) (except for the limit set forth in sub-
14 paragraph (A)) shall apply only to a children’s prod-
15 uct (as defined in section 3(a) of the Consumer
16 Product Safety Act (15 U.S.C. 2052(a))) that is
17 manufactured after the effective date of such respec-
18 tive limit.”.

19 (c) ALTERNATIVE LIMITS AND EXCEPTIONS.—Sec-
20 tion 101(b) of such Act (15 U.S.C. 1278a(b)(1)) is
21 amended—

22 (1) by striking paragraph (1) and inserting the
23 following:

24 “(1) FUNCTIONAL PURPOSE EXCEPTION.—

1 “(A) IN GENERAL.—The Commission, on
2 its own initiative or upon petition by an inter-
3 ested party, shall grant an exception to the pro-
4 hibition in subsection (a) for a specific product,
5 material, or component part if the Commission,
6 after notice and comment in accordance with
7 subparagraph (B), determines that—

8 “(i) the product, material, or compo-
9 nent part requires the inclusion of lead be-
10 cause it is not practicable or not techno-
11 logically feasible to manufacture such
12 product, material, or component part, as
13 the case may be, in accordance with sub-
14 section (a) by removing the excessive lead
15 or by making the lead inaccessible;

16 “(ii) the product, material, or compo-
17 nent part is not likely to be placed in the
18 mouth or ingested, taking into account
19 normal and reasonably foreseeable use and
20 abuse of such product, material, or compo-
21 nent part by a child; and

22 “(iii) an exception for the product,
23 material, or component part will have no
24 measurable adverse effect on public health

1 or safety, taking into account normal and
2 reasonably foreseeable use and abuse.

3 For purposes of clause (iii), there is no measur-
4 able adverse effect on public health or safety if
5 the exception described in this subparagraph
6 will result in no measurable increase in blood
7 lead levels.

8 “(B) PROCEDURES FOR GRANTING EXCEP-
9 TION.—

10 “(i) NOTICE AND COMMENT PE-
11 RIOD.—Before granting an exception under
12 subparagraph (A), the Commission shall
13 allow not fewer than 60 days for public
14 comment after publishing the notice of the
15 proposed exception.

16 “(ii) BURDEN OF PROOF.—A party
17 seeking an exception under subparagraph
18 (A) has the burden of demonstrating that
19 it meets the requirements of such subpara-
20 graph.

21 “(iii) GROUNDS FOR DECISION.—In
22 the case where a party has petitioned for
23 an exception, in determining whether to
24 grant the exception, the Commission may
25 base its decision solely on the materials

1 presented by the party seeking the excep-
2 tion and any materials received through
3 notice and comment.

4 “(iv) ADMISSIBLE EVIDENCE.—In
5 demonstrating that it meets the require-
6 ments of subparagraph (A), a party seek-
7 ing an exception under such subparagraph
8 may rely on any nonproprietary informa-
9 tion submitted by any other party seeking
10 such an exception and such information
11 shall be considered part of the record pre-
12 sented by the party that relies on that in-
13 formation.

14 “(v) SCOPE OF EXCEPTION.—If an ex-
15 ception is sought for an entire product, the
16 burden is on the petitioning party to dem-
17 onstrate that the criteria in subparagraph
18 (A) are met with respect to every acces-
19 sible component or accessible material of
20 the product.

21 “(C) LIMITATION ON EXCEPTION.—If the
22 Commission grants an exception for a product,
23 material, or component part under subpara-
24 graph (A), the Commission may, as necessary
25 to protect public health or safety—

1 “(i) require each manufacturer of
2 such product, material, or component part
3 to reduce the level of lead in such product,
4 material, or component part; or

5 “(ii) place a manufacturing expiration
6 date on such exception or establish a
7 schedule after which the manufacturer of
8 such product, material, or component part
9 shall be in full compliance with the limits
10 in subsection (a).

11 “(D) APPLICATION OF EXCEPTION.—An
12 exception under subparagraph (A) for a prod-
13 uct, material, or component part shall apply re-
14 gardless of the date of manufacture unless the
15 Commission expressly provides otherwise.

16 “(E) PREVIOUSLY SUBMITTED PETI-
17 TIONS.—A party seeking an exception under
18 this paragraph may rely on materials previously
19 submitted in connection with a petition for ex-
20 clusion under this section. In such cases, peti-
21 tioners must notify the Commission of their in-
22 tent to rely on materials previously submitted.
23 Such reliance does not affect petitioners’ obliga-
24 tion to demonstrate that they meet all require-

1 ments of this paragraph as required by sub-
2 paragraph (B)(ii).”;

3 (2) in paragraph (2)(A), by striking “include
4 to,” and inserting “include”;

5 (3) by redesignating paragraph (5) as para-
6 graph (7) and inserting after paragraph (4) the fol-
7 lowing:

8 “(5) CERTAIN OUTDOOR RECREATIONAL PROD-
9 UCTS.—

10 “(A) METAL COMPONENT PARTS.—In lieu
11 of the lead limits established in subsection
12 (a)(2), the limits set forth for each respective
13 material in section 1500.88 of title 16, Code of
14 Federal Regulations (as in effect on January
15 20, 2010) shall apply to metal component parts
16 made of such materials in children’s products,
17 other than apparel, intended primarily for out-
18 door recreational use, regardless of the date on
19 which such products were manufactured.

20 “(B) BATTERY TERMINALS.—The lead
21 limits established in subsection (a)(2) shall not
22 apply to battery terminals in children’s prod-
23 ucts intended primarily for outdoor recreational
24 use.

1 “(6) EXCLUSION OF CERTAIN USED CHIL-
2 DREN’S PRODUCTS.—

3 “(A) GENERAL EXCLUSION.—The lead
4 limits established under subsection (a) shall not
5 apply to a used children’s product.

6 “(B) DEFINITION.—The term ‘used chil-
7 dren’s product’ means a children’s product that
8 was obtained by the seller for use and not for
9 the purpose of resale or was obtained by the
10 seller, either directly or indirectly, from a per-
11 son who obtained such children’s product for
12 use and not for the purpose of resale. Such
13 term also includes a children’s product that was
14 donated to the seller for charitable distribution
15 or resale to support charitable purposes. Such
16 term shall not include—

17 “(i) children’s metal jewelry; or

18 “(ii) any children’s product for which
19 the donating party or the seller has actual
20 knowledge that the product is in violation
21 of the lead limits in this section.

22 For purposes of this definition, the term ‘seller’
23 includes a person who lends or donates a used
24 children’s product.”; and

25 (4) in paragraph (7) (as so redesignated)—

1 (A) by inserting “the alternative limits set
2 forth in this subsection and” after “review and
3 revise”; and

4 (B) by striking “the first promulgation of
5 a of a regulation under this subsection” and in-
6 serting “the date of enactment of the Enhanc-
7 ing CPSC Authority and Discretion Act of
8 2011,”.

9 **SEC. 4. APPLICATION OF THIRD PARTY TESTING REQUIRE-**
10 **MENTS.**

11 (a) **APPLICABLE CHILDREN’S PRODUCTS.**—Section
12 14(a) of the Consumer Product Safety Act (15 U.S.C.
13 2063(a)) is amended—

14 (1) in paragraph (2)—

15 (A) in the matter preceding subparagraph
16 (A), by inserting “described in paragraph
17 (3)(B)” after “a children’s product safety rule”;

18 (B) in subparagraph (B), by striking “the
19 children’s product safety rule” and inserting
20 “such children’s product safety rule”; and

21 (C) by striking the flush sentence following
22 subparagraph (B); and
23 (2) in paragraph (3)—

1 (A) in subparagraph (A), by inserting “de-
2 scribed in subparagraph (B)” after “a chil-
3 dren’s product safety rule”; and

4 (B) by amending subparagraph (B)(vi) to
5 read as follows:

6 “(vi) OTHER DURABLE NURSERY
7 PRODUCTS.—The Commission shall publish
8 notice of the requirements for accreditation
9 of third party conformity assessment bod-
10 ies to assess conformity with other rules
11 promulgated under section 104 of the Con-
12 sumer Product Safety Improvement Act of
13 2008 not later than 90 days before such
14 rules or revisions take effect.”.

15 (b) THIRD PARTY TESTING REQUIREMENTS.—

16 (1) REQUIREMENTS.—Section 14(b) of the
17 Consumer Product Safety Act (15 U.S.C. 2063(b))
18 is amended to read as follows:

19 “(b) TESTING PROGRAMS.—

20 “(1) IN GENERAL.—The Commission may, by
21 rule, prescribe reasonable testing programs to be
22 used as the basis for certification under subsection
23 (a).

24 “(2) TESTING BY AN INDEPENDENT THIRD
25 PARTY.—Any test or testing program on the basis of

1 which a certificate is issued under subsection (a)
2 may, at the option of the person required to certify
3 the product, be conducted by an independent third
4 party qualified to perform such tests, unless the
5 Commission, by rule and in accordance with para-
6 graph (3), requires testing by an independent third
7 party for—

8 “(A) a particular rule, regulation, stand-
9 ard, ban;

10 “(B) any portion of a particular rule, regu-
11 lation, standard, or ban; or

12 “(C) a particular class of products.

13 “(3) REQUIREMENTS FOR TESTING BY AN
14 INDEPENDENT THIRD PARTY.—

15 “(A) REQUIREMENTS.—The Commission
16 may not require testing by an independent third
17 party under paragraph (2) until the Commis-
18 sion has—

19 “(i) established and published notice
20 of the requirements for accreditation of
21 third party conformity assessment bodies
22 who are determined to be qualified by the
23 Commission to conduct such testing;

24 “(ii) determined that the testing ca-
25 pacity of accredited third part conformity

1 assessment bodies, taken together as a
2 whole, is sufficient to prevent unreasonable
3 delays due to testing;

4 “(iii) established, by rule, exemptions
5 or alternative testing procedures for the
6 certification of works of art and other one-
7 of-a-kind products and of specialty prod-
8 ucts for the disabled, and products that
9 are produced in small quantities such that
10 the cost of testing by an independent third
11 party is not economically practicable; and

12 “(iv) made a reasoned determina-
13 tion—

14 “(I) that the benefits from re-
15 quiring third-party testing justify the
16 costs; and

17 “(II) that any rule issued pursu-
18 ant to this paragraph is tailored to
19 impose the least possible burden, tak-
20 ing into account to the extent prac-
21 ticable, the costs of cumulative regula-
22 tions.

23 “(B) PRODUCED IN SMALL QUANTITIES
24 DEFINED.—For purposes of subparagraph
25 (A)(iii), the term ‘produced in small quantities’

1 means that not more than 10,000 units of the
2 same product (or substantially similar products)
3 are produced in one year by a manufacturer
4 and any affiliated manufacturer. A manufac-
5 turer may not subdivide the production of such
6 manufacturer into small quantities in order to
7 evade third party testing requirements.

8 “(4) STAY OF ENFORCEMENT AND REVIEW OF
9 REQUIREMENTS.—

10 “(A) STAY OF ENFORCEMENT.—The Com-
11 mission may not enforce any third-party testing
12 requirement relating to lead content limits
13 (other than for children’s metal jewelry),
14 phthalate limits, or the mandatory toy standard
15 until the Commission has complied with the re-
16 quirements of paragraph (3) with respect to
17 such requirement.

18 “(B) REVIEW.—The Commission may
19 modify any other third-party testing require-
20 ment it has adopted, based on a review of such
21 requirements in accordance with paragraph (3),
22 to provide additional flexibility or to eliminate
23 unnecessary burdens.”.

24 (2) PROHIBITED ACT.—Section 19(a)(14) of
25 the Consumer Product Safety Act (15 U.S.C.

1 2068(a)(14)) is amended by inserting before the pe-
2 riod the following: “, or to subdivide the production
3 of any children’s product into small quantities in
4 order to evade any third party testing requirements
5 under section 14(a)(2)”.

6 (c) CONTINUING TESTING.—Section 14(d)(2) of the
7 Consumer Product Safety Act (15 U.S.C. 2063(d)(2)) is
8 amended—

9 (1) by striking “Not later than 15 months after
10 the date of enactment of the Consumer Product
11 Safety Improvement Act of 2008, the” and inserting
12 “(A) The”;

13 (2) by redesignating clauses (i) through (iv) of
14 subparagraph (B) as subclauses (I) through (IV),
15 respectively, and by redesignating subparagraphs
16 (A) and (B) as clauses (i) and (ii), respectively;

17 (3) in the matter preceding clause (i) (as so re-
18 designated), by striking “shall”;

19 (4) in clause (i) (as so redesignated), by strik-
20 ing “initiate” and inserting “not later than 15
21 months after the date of enactment of the Consumer
22 Product Safety Improvement Act of 2008, shall ini-
23 tiate”; and

24 (5) in clause (ii) (as so redesignated), by strik-
25 ing “establish” and inserting “may establish”; and

1 (6) by inserting at the end the following:

2 “(B) The Commission may not enforce any
3 third-party testing requirement pursuant to this
4 paragraph without first having determined that such
5 requirement is consistent with the requirements of
6 subsection (b)(3)(A)(iv).”.

7 **SEC. 5. APPLICATION OF AND PROCESS FOR UPDATING DU-**
8 **RABLE NURSERY PRODUCTS STANDARDS.**

9 (a) UPDATING STANDARD.—Section 104(b) of the
10 Consumer Product Safety Improvement Act of 2008 (15
11 U.S.C. 2056a(b)) is amended by adding at the end the
12 following:

13 “(4) PROCESS FOR CONSIDERING SUBSEQUENT
14 REVISIONS TO VOLUNTARY STANDARD.—

15 “(A) NOTICE OF ADOPTION OF VOL-
16 UNTARY STANDARD.—When the Commission
17 promulgates a consumer product safety stand-
18 ard under this subsection that is based, in
19 whole or in part, on a voluntary standard, the
20 Commission shall notify the organization that
21 issued the voluntary standard of the Commis-
22 sion’s action and shall provide a copy of the
23 consumer product safety standard to the orga-
24 nization.

1 “(B) COMMISSION ACTION ON REVISED
2 VOLUNTARY STANDARD.—If an organization re-
3 vises a standard that has been adopted, in
4 whole or in part, as a consumer product safety
5 standard under subparagraph (A), it shall no-
6 tify the Commission. The revised voluntary
7 standard shall be considered to be a consumer
8 product safety standard issued by the Commis-
9 sion under section 9 of the Consumer Product
10 Safety Act (15 U.S.C. 2058), effective 180 days
11 after the date on which the organization notifies
12 the Commission (or such later date specified by
13 the Commission in the Federal Register) unless,
14 within 90 days after receiving that notice, the
15 Commission notifies the organization that it has
16 determined that the proposed revision does not
17 improve the safety of the consumer product cov-
18 ered by the standard and that the Commission
19 is retaining the existing consumer product safe-
20 ty standard.”.

21 (b) APPLICATION OF STANDARD.—Section 104(c) of
22 the Consumer Product Safety Improvement Act of 2008
23 (15 U.S.C. 2056a) is amended by redesignating paragraph
24 (3) as paragraph (4) and inserting after paragraph (2)
25 the following:

1 “(3) APPLICATION.—

2 “(A) IN GENERAL.—Paragraph (1) shall
3 not apply to any revision of the standard pro-
4 mulgated under subsection (b)(1)(B) subse-
5 quent to the initial promulgation of a standard
6 under such subsection.

7 “(B) SPECIAL RULE FOR FIXED-SIDE
8 CRIBS SUBJECT TO CERTAIN STATE OR LOCAL
9 LAW REQUIREMENTS.—Paragraph (1) shall not
10 apply to a fixed-side crib that has not been re-
11 called and that is offered or provided for use in
12 a licensed child care facility (other than a fam-
13 ily child care home) that is subject to the fol-
14 lowing requirements under the law of a State or
15 a political subdivision of a State:

16 “(i) The facility may not allow a child
17 to remain in a crib for any significant
18 amount of time while the child is awake.

19 “(ii) The facility may not place in a
20 crib a child over the age of 16 months.

21 “(iii) An adult must be present when-
22 ever a child is in a crib.”.

1 **SEC. 6. APPLICATION OF SECTION 106 TO FDA-REGULATED**
2 **PRODUCTS.**

3 Section 106(a) of the Consumer Product Safety Im-
4 provement Act (15 U.S.C. 2056b(a)) is amended by in-
5 serting “or any provision that restates or incorporates a
6 regulation promulgated by the Food and Drug Adminis-
7 tration or any statute administered by the Food and Drug
8 Administration” after “or by statute”.

9 **SEC. 7. APPLICATION OF PHTHALATES STANDARD.**

10 (a) ACCESSIBLE, PLASTICIZED COMPONENT
11 PARTS.—Section 108 of the Consumer Product Safety Im-
12 provement Act of 2008 (15 U.S.C. 2057c) is amended—

13 (1) by redesignating subsections (c) through (e)
14 as subsections (d) through (f), respectively; and

15 (2) by inserting after subsection (b) the fol-
16 lowing:

17 “(c) APPLICATION.—

18 “(1) ACCESSIBLE COMPONENT PARTS.—Effec-
19 tive on the date of enactment of this Act, sub-
20 sections (a) and (b)(1) and any rule promulgated
21 under subsection (b)(3) shall apply to any accessible,
22 plasticized component part of a children’s toy or
23 child care article.

24 “(2) COMMISSION AUTHORITY.—The Commis-
25 sion may, by rule, exempt any children’s toy or child
26 care article described in paragraph (1) or any class

1 of such products or materials used in such products
2 from any of the prohibitions under subsections (a)
3 and (b)(1) and any rule promulgated under sub-
4 section (b)(3) where the Commission determines that
5 compliance with any such prohibition is not nec-
6 essary to protect children’s health.”.

7 (b) EFFECT OF CONCLUSIONS OF THE CHRONIC
8 HAZARD ADVISORY PANEL.—Section 108(b)(3) of such
9 Act (15 U.S.C. 2057c(b)(3)) is amended—

10 (1) by striking “Not later than” and inserting
11 the following:

12 “(A) RULEMAKING REQUIRED.—Not later
13 than”;

14 (2) by redesignating subparagraphs (A) and
15 (B) as clauses (i) and (ii), respectively;

16 (3) in clause (i) (as so redesignated), by insert-
17 ing “or terminate such prohibition” after “margin of
18 safety”; and

19 (4) by adding at the end the following:

20 “(B) DEADLINE AND EFFECT ON PROHIBI-
21 TION.—If the Commission does not commence a
22 rulemaking proceeding within 90 days after re-
23 ceiving the report required by paragraph (2)(C)
24 or does not issue a final rule as required by
25 subparagraph (A) within 180 days after com-

1 mencing a rulemaking, the prohibition in para-
2 graph (1) shall terminate.”.

3 (c) DEFINITIONS.—Section 108(f) of the Consumer
4 Product Safety Improvement Act of 2008 (15 U.S.C.
5 2057c(f)) (as redesignated by subsection (a)) is amend-
6 ed—

7 (1) in paragraph (1)—

8 (A) in subparagraph (B), by striking “con-
9 sumer product” and all that follows and insert-
10 ing “children’s product that is subject to the
11 standard made mandatory by section 106(b) or
12 any successor standard”;

13 (B) in subparagraph (C), by striking “con-
14 sumer product” and inserting “children’s prod-
15 uct”; and

16 (C) in subparagraph (D)—

17 (i) by striking “consumer product”
18 and inserting “children’s product”;

19 (ii) by striking “section 3(a)(1)” and
20 inserting “section 3(a)”; and

21 (iii) by striking “2052(a)(1)” and in-
22 serting “2052(a)”; and

23 (2) by amending paragraph (2) to read as fol-
24 lows:

1 “(2) DETERMINATION GUIDELINES.—For pur-
2 poses of this section, a toy can be placed in a child’s
3 mouth if any part of the toy can actually be brought
4 to the mouth and kept in the mouth by a child so
5 that it can be sucked and chewed. If the children’s
6 product can only be licked, it is not regarded as able
7 to be placed in the mouth. If a toy or part of a toy
8 in one dimension is smaller than 5 centimeters, it
9 can be placed in the mouth.”.

10 **SEC. 8. EXEMPTION AUTHORITY FOR TRACKING LABELS**
11 **REQUIREMENT.**

12 Section 14(a)(5) of the Consumer Product Safety Act
13 (15 U.S.C. 2063(a)(5)) is amended—

14 (1) by striking “Effective 1 year” and inserting
15 “(A) Effective 1 year”;

16 (2) by redesignating subparagraphs (A) and
17 (B) as clauses (i) and (ii), respectively; and

18 (3) by adding at the end the following:

19 “(B) The Commission may, by regulation, exclude a
20 specific product or class of products from the require-
21 ments in subparagraph (A) if the Commission determines
22 that it is not practicable for such product or class of prod-
23 ucts to bear the marks required by such subparagraph.
24 The Commission may establish alternative requirements
25 for any product or class of products excluded under the

1 preceding sentence consistent with the purposes described
2 in clauses (i) and (ii) of subparagraph (A).”.

3 **SEC. 9. REQUIREMENTS FOR PUBLIC DATABASE.**

4 (a) REQUIREMENTS FOR SUBMISSIONS TO THE
5 DATABASE.—Section 6A(b) of the Consumer Product
6 Safety Act (15 U.S.C. 2055a(b)) is amended—

7 (1) in paragraph (1)(A)—

8 (A) in clause (i), by striking “consumers”
9 and inserting “persons who suffer harm or risk
10 of harm related to the use of a product, their
11 next of kin or members of their household, their
12 legal representative, or another person expressly
13 authorized by any such person”; and

14 (B) in clause (v), by striking “public safety
15 entities” and inserting “police, fire, ambulance,
16 emergency medical services, Federal, State, and
17 local law enforcement entities, and other public
18 safety officials”; and

19 (2) in paragraph (2)(B)—

20 (A) in clause (i), by inserting “and its lo-
21 cation and availability” after “concerned”;

22 (B) in clause (iv), by inserting “and if
23 such person is not the person harmed by the
24 product, the name and contact information of
25 the person who suffered the harm or risk of

1 harm related to the use of the product” after
2 “report”; and

3 (C) in clause (v), by inserting “that such
4 person is the consumer who used the product
5 that gave rise to the harm, the user’s next of
6 kin, a member of the user’s household, the legal
7 representative of the user, or another person ex-
8 pressly authorized by any such person and”
9 after “person submitting the information”.

10 (b) ADEQUACY AND ACCURACY OF INFORMATION RE-
11 PORTED TO THE PUBLIC DATABASE.—Section 6A(c)(2) of
12 the Consumer Product Safety Act (15 U.S.C.
13 2055a(c)(2)) is amended—

14 (1) in subparagraph (A), by striking “to sub-
15 mit” and all that follows and inserting “to—

16 “(i) notify the Commission within 10
17 business days after receipt of the report
18 that the information provided in the report
19 is insufficient for determining which of the
20 manufacturer’s products is the subject of
21 the complaint, in which case the manufac-
22 turer shall provide the Commission (and
23 the person submitting the complaint, if
24 that person has consented to disclosure of
25 contact information) with information to

1 assist the person submitting the report to
2 sufficiently identify or provide an adequate
3 description of the product;

4 “(ii) notify the Commission within 10
5 business days after receipt of the report
6 that the information provided in the report
7 is materially inaccurate and to provide the
8 Commission with any additional informa-
9 tion supporting the manufacturer’s claim
10 of inaccuracy; and

11 “(iii) submit other comments to the
12 Commission on the information contained
13 in such report.”; and

14 (2) by redesignating subparagraphs (B) and
15 (C) as subparagraphs (C) and (D), respectively, and
16 inserting after subparagraph (A) the following:

17 “(B) ACTION BY THE COMMISSION.—

18 “(i) INSUFFICIENT PRODUCT IDENTI-
19 FICATION.—If a manufacturer notifies the
20 Commission of the insufficiency of the
21 product information in a report pursuant
22 to subparagraph (A)(i), and the Commis-
23 sion agrees that the information provided
24 is insufficient to identify the product, the
25 Commission shall provide the information

1 provided by the manufacturer to the per-
2 son submitting the report (unless such in-
3 formation has already been provided di-
4 rectly by the manufacturer) and seek to
5 obtain from such person an adequate de-
6 scription of the product.

7 “(ii) MATERIALLY INACCURATE IN-
8 FORMATION.—If a manufacturer notifies
9 the Commission of a material inaccuracy in
10 a report pursuant to subparagraph (A)(ii),
11 and the Commission determines that the
12 claim is potentially valid, the Commission
13 shall seek to resolve the inaccuracy by any
14 of the following:

15 “(I) Obtaining from the person
16 submitting the report such additional
17 information necessary to correct the
18 inaccuracy.

19 “(II) Investigating the incident
20 giving rise to the report in order to
21 correct any such inaccuracy.

22 “(III) Providing the manufac-
23 turer a reasonable period of time to
24 investigate and provide additional in-
25 formation to correct any inaccuracy.

1 “(iii) STAY ON INCLUSION IN DATA-
2 BASE.—The Commission shall not include
3 in the database a report described in
4 clauses (i) or (ii) until the product is spe-
5 cifically identified and any material inaccu-
6 racy corrected.”.

7 (c) MISREPRESENTATION PROHIBITED.—Section
8 19(a)(13) of the Consumer Product Safety Act (15 U.S.C.
9 2068(a)(13)) is amended by inserting “related to a sub-
10 mission of information to the database established under
11 section 6A, or” after “misrepresentation to such an officer
12 or employee”.

13 **SEC. 10. SUBPOENA AUTHORITY.**

14 Section 27(b) of the Consumer Product Safety Act
15 (15 U.S.C. 2076(b)) is amended—

16 (1) in paragraph (3), by inserting “and phys-
17 ical” after “documentary”;

18 (2) in paragraph (8), by striking “and”;

19 (3) by redesignating paragraph (9) as para-
20 graph (10) and inserting after paragraph (8) the fol-
21 lowing:

22 “(9) to delegate to the general counsel of the
23 Commission the authority to issue subpoenas solely
24 to Federal, State, or local government agencies for
25 evidence described in paragraph (3); and”; and

1 (4) in paragraph (10) (as so redesignated), by
2 inserting “(except as provided in paragraph (9))”
3 after “paragraph (3)”.

4 **SEC. 11. AVAILABILITY OF CERTAIN PERSONAL AND MED-**
5 **ICAL INFORMATION TO THE CPSC.**

6 Section 5 of the Consumer Product Safety Act (15
7 U.S.C. 2054) is amended by adding at the end the fol-
8 lowing new subsection:

9 “(e) AVAILABILITY OF PERSONAL AND MEDICAL IN-
10 FORMATION UNDER HIPAA.—In order to carry out its
11 investigative and enforcement activities under this Act and
12 under any of the Acts enforced by the Commission, the
13 Commission shall be deemed a public health authority
14 within the meaning of section 164.512(b)(i) of title 45,
15 Code of Federal Regulations, for purposes of permitted
16 disclosures of protected health information authorized
17 under such section.”.

18 **SEC. 12. EFFECTIVE DATE.**

19 Except as provided otherwise, the amendments made
20 by this Act shall take effect on the date of enactment of
21 this Act.